



DEPARTMENT OF THE ARMY

ST. PAUL DISTRICT, CORPS OF ENGINEERS
ARMY CORPS OF ENGINEERS CENTRE
190 FIFTH STREET EAST
ST. PAUL, MN 55101-1638

June 5, 2001

REPLY TO
ATTENTION OF

Construction-Operations
Regulatory (01-03564-DJP)

Mr. Robert J. Heilgeist
11810 - 336th Avenue
Twin Lakes, Wisconsin 53181

Dear Mr. Heilgeist:

This is in response to a Natural Resources Consulting, Inc. transmittal letter dated April 27, 2001, requesting Corps concurrence with the wetland delineation they completed at your property. The project site is located at the Salem Hills subdivision, in the SE 1/4, SE 1/4, Sec. 5, T. 1N., R. 20E., Kenosha County, Wisconsin, as shown on the attached drawing or map.

We have reviewed the wetland delineation report and concur that the wetland boundary at your property has been established in accordance with the 1987 Corps of Engineers wetland delineation manual. We recommend that the delineated wetland boundary be located by a survey and identified on a plat of survey. We recommend that the delineated wetland boundary be identified on any development plans forwarded to our office for review. This wetland delineation shall remain valid for a period of five years from the date of this letter, unless new information warrants revision of the delineation before the expiration date.

This jurisdictional determination takes into consideration the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County v. Corps of Engineers (the SWANCC decision). The area encompassed by this jurisdictional determination contains waterbodies/wetlands that are approximately 0.44 acre in size.

The wetland delineation report provided identifies two separate wetlands at the project site. The first 0.35 acre wetland, located on lots 18 and 19, is not a "water of the United States" because it is: (1) not a navigable water, (2) not an interstate water, (3) not part of a tributary system to 1 or 2, (4) not a wetland adjacent to any of the foregoing, and not an impoundment of any of the above. In addition, the interstate commerce nexus to this particular waterbody is insufficient to establish Clean Water Act jurisdiction. This waterbody is therefore not subject to regulation by the Corps of Engineers under Section 404 of the Clean Water Act.



The second 0.10 acre wetland, located on lot 25, is subject to regulation by the Corps of Engineers under Section 404 of the clean Water Act because it is connected to a tributary to the Fox River, via a man-made ditch system. Therefore, the discharge of dredged and or fill materials into this wetland would require a Department of the Army permit.

During an April 24, 2001, meeting with Dale Pfeiffle of my staff, you indicated that you would either excavate the 0.1 acre wetland with a backhoe, or plant trees in the area. If the area is to be excavated, all of the excavated materials would be placed directly unto the surrounding uplands.

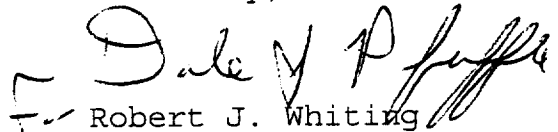
The excavation of a pond as described above, or the planting of trees within the wetland at the location stated is not within the regulatory jurisdiction of the Corps of Engineers. No work will be done in a navigable water of the United States, and no dredged or fill material will be discharged in any water of the United States, including wetlands. Therefore, a Department of the Army permit is not required to excavate a pond or to plant trees.

This jurisdictional determination is valid only for the project and waterbodies referenced above. It is based on the Headquarters guidance available to us at this time.

PLEASE NOTE THAT THIS LETTER DOES NOT ELIMINATE THE NEED FOR OTHER FEDERAL, STATE, LOCAL, OR OTHER AUTHORIZATIONS (SUCH AS THOSE OF THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES OR KENOSHA COUNTY).

If you have any questions, contact Dale Pfeiffle in our Waukesha office at (262) 547-0868. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,


Robert J. Whiting
Chief, Regulatory Branch

Copy furnished to:

Dave Meyer, WDNR, Sturtevant, WI
Lois Simon, WDNR, Madison, WI
Bonnie Shaefer, Kenosha County, Bristol, WI
Joe Pagliara, Natural Resources Consulting, Inc., Cottage Grove,
WI